

**567—73.33(455B) Unsafe dams.****73.33(1) *Procedures for designation of a dam as unsafe.***

*a. Department report.* If after inspection or other investigation the department determines that a dam is unsafe, a report shall be prepared. Copies of the report shall be provided to the dam owner and any other person whom the report identifies as responsible for the unsafe condition of the dam. The report shall identify the problems which cause the dam to be unsafe and recommend action to remedy the unsafe condition.

*b. Opportunity for comment.* The department shall provide the dam owner or other responsible person with a reasonable opportunity to comment on the department report considering the degree and imminence of hazard identified in the department report.

**73.33(2) *Criteria for designating a dam as unsafe.*** Designation of a dam as unsafe shall be based on one or more of the following findings:

*a.* The dam has serious deficiencies in its design, construction, use, maintenance, or physical condition which would contribute to failure or otherwise increase flood damages;

*b.* A high hazard or significant hazard dam has inadequate spillway capacity for the size and hazard potential of the dam.

**73.33(3) *Department action concerning an unsafe dam.*** After completion of the procedures for designating an unsafe dam, the department shall issue an initial decision which may order remedial work depending on the degree and imminence of hazard caused by the unsafe condition. Remedial work may include draining of the impoundment or removal of any structure determined to constitute a public nuisance. Procedures for appealing an initial decision are the procedures in 567—Chapter 7. If the initial decision requires emergency remedial work to abate an imminent danger of failure which would cause significant public damages, the director of the department may request the assistance of the attorney general to seek an appropriate judicial order compelling performance of emergency remedial work.

[ARC 5899C, IAB 9/8/21, effective 10/13/21]